IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO.14389 OF 2007
IN
WRIT PETITION NO.482 OF 2007

M/s.Astha Vision Advertising ..Petitioner

V/s.

Union of India & anr. ..Respondents

Mr.G.S.Godbole, advocate, for petitioner
Mr.A.M.Sethna with Ms.Naveena Kumar for the respondents

CORAM : A.S.OKA, J.

DATE : 29TH SEPTEMBER, 2007

P.C.

1. Submissions of the learned counsel appearing for the parties were heard on earlier date. However, order was not passed to enable the learned counsel appearing for first respondent to take instructions.

2. This Review Petition is filed seeking review of an order passed by this Court on a petition under Article 227 of the Constitution of India. The petitioner is the original plaintiff.

According to the case of the petitioner, a plot of land which is more particularly described in the plaint is owned by the second respondent(original second defendant). It is the case of the petitioner that there was an agreement dated 4th August, 2003 executed by the second respondent in favour of the petitioner by which the petitioner was allowed to use the space described in paragraph one of the plaint for the purposes of erecting advertisement hoardings and sign boards. The petitioner's case is that huge hoardings have already been erected. Reliance is placed on the said agreement by the petitioner. The first respondent issued notice to the second respondent to remove the hoardings. The said notice is the subject matter of challenge in the suit filed by the petitioner. The basic contention of the petitioner in the suit is that the hoardings have been erected on a private property in possession of the second respondent and therefore, first respondent cannot issue a notice calling upon second respondent to remove the hoardings. In the suit filed by the petitioner an application for

temporary injunction was made before the trial Court which was rejected. An appeal was preferred by the petitioner which was dismissed by the District Court by Judgment and Order dated 13th April, 2007. These two orders were subject matter of challenge in the Writ Petition. This Court dismissed the Writ Petition.

3. Learned counsel appearing for the petitioner submitted that this Court has rejected Writ Petition on the ground that there was a covenant in the agreement executed by the second respondent, which provided that it was the responsibility of the petitioner to obtain a permission/no objection from the Pune Cantonment Board for allowing the hoardings and the petitioner has not obtained any such permission. He placed a reliance on various documents which are annexed to the Review Petition which show that Cantonment Board has granted permission to the petitioner to erect the hoardings and said permission has been re-newed against payment of regular charges. He submitted that the only ground on which Writ Petition was dismissed is

that the petitioner failed to obtain permission from Pune Cantonment Board and the documents which are now annexed to the Review Petition show that the Cantonment Board has granted permission to erect the hoardings. He submitted that in view of the availability of the aforesaid documents, the order passed in Writ Petition is requires to be reviewed.

4. The first respondent has opposed this Writ Petition by filing an affidavit of one Ramchandra Sonelal Thakur. Learned counsel for the first respondent has also filed written submissions. The main submission is that there is a letter dated 18th July, 2007 issued by the Chief Executive Officer of the Pune Cantonment Board addressed to the Defence Estate Officer, Pune stating that the Pune Cantonment Board was not competent to grant a permission to erect the hoardings on the land under the Management of the Defence Estate officer, Pune. The submission is that permissions which are sought to be relied upon in the Review Petition do not relate to the hoardings which are subject

matter of the dispute in the suit and the said permissions are in respect of the hoardings at a different location. It is submitted that the said permissions relate to the Stavely Road and not to the hoardings in the land of the second respondent. It is, therefore, submitted that no case is made out for reviewing earlier order.

5. I have carefully considered the submissions. In the Judgment and Order dated 13th April, 2007, after noting submission made by the learned counsel for the petitioner, this Court has referred to clause 4 of the agreement between the petitioner and the second respondent which reads thus :-

> "To obtain at their own costs 'No Objection' letters for certificates or relevant permissions from the Pune Cantonment Board. Defence Estates Officer or any other public or statutory authority or body as may be necessary and/or legally required from time to time and at all times during the period of this license."

6. In paragraph seven of the Judgment and Order this Court has observed thus :-

> “The agreement specifically records that in spite of the said notice, petitioner has entered into agreement and has undertaken to remove the objection of the Defence Estate Officer. The petitioner has agreed to obtain at its own costs no objection certificate or relevant permissions from the Pune Cantonment Board or Defence Estate Officer or any other public or statutory authority during the period of licence. Thus, the petitioner has entered into an agreement with the second respondent with the full knowledge that the Defence Estate Officer had issued notice calling for removal of the hoardings. In fact, agreement clearly records that it was the responsibility of the petitioner to obtain permission/no objection from the Cantonment Board for allowing the hoardings. Thus, prima facie, it appears that the petitioner has entered into an agreement by taking a risk through the second respondent had fully made the petitioner aware the fact that in absence of permission of the concerned authority, the hoarding could not have been erected. The agreement records undertaking of the petitioner in respect of obtaining necessary no objection or permission. Admittedly, petitioner has not obtained any permission or licence.”

7. Thus, the perusal of the Judgment of this Court shows that the case made out by the petitioner was not accepted by this Court on the ground that there was no permission granted for erection or display of the hoardings in dispute by the Pune Cantonment Board or the Defence Estate Officer. The suit was filed by the petitioner in

the year 2003. The application for temporary injunction was decided on 10th February, 2005 and the appeal in the District Court was disposed of on 24th November, 2005. In the Review Petition, reliance has been placed on four different permissions granted by the Pune Cantonment Board on 16th November, 2005. A reliance is also placed on various receipts of the payments made by the petitioner to the Pune Cantonment Board in February, 2007. Moreover, reliance has been placed on the letters dated 10th May, 2007 and 5th June, 2007 issued by the Pune Cantonment Board acknowledging the receipt of various amounts from the petitioner. The objection to the said documents by the first respondent is firstly that the documents do not relate to the hoardings which are subject matter of the dispute in the suit and the permissions granted by the Cantonment Board relate to some other property. The other objection is on the basis of a letter dated 18th July, 2007 issued by the Pune Cantonment Board in which it is stated that in respect of the properties under the Management of the Defence Estate Officer, the

Cantonment Board has no power to grant the permission to erect the hoardings.

8. Some of the documents relied upon by the petitioner in this Review Petition could not have been produced in the Courts below. The first respondent is relying upon a letter dated 18th July, 2007 which also could not have been produced during the pendency of the proceedings in the Courts below.

9. It must be borne in mind that the writ petition is rejected only on the ground that the petitioner could not produce any document showing grant of permission for erection of the hoardings issued either by the Pune Cantonment Board or the Defence Estate Officer, Pune. Prima facie it appears from the documents annexed to Review Petition that a permission has been granted by the Pune Cantonment Board in favour of the petitioner for erecting four advertisement hoardings at 1, Stavley road. The said documents annexed to the Review Petition show that substantial payment has

been made by the petitioner to the Pune Cantonment Board.

10. The controversy raised is whether the permissions granted relate to the hoardings in dispute and whether the Pune Cantonment Board has power to grant permission. These issues are required to be decided by appreciating the evidence on record. In a Review Petition this exercise cannot be done. The suit filed by the petitioner is still pending. As the Writ Petition has been rejected only on the ground that the petitioner could not show permission granted either by the Pune Cantonment Board or Defence Estate Officer, a liberty deserves to be granted to the petitioner to make a fresh application for interim relief before the trial Court by placing reliance on the documents which are annexed to the Review Petition. Such application, if made, can always be opposed by the first respondent by raising various contentions including the contentions which are raised in this petition. To enable the petitioner to make appropriate application, limited protection

deserves to be granted to the petitioner.

11. Hence,I pass the following order.

(i) Review petition is not entertained. However, it will be open for the petitioner to make a fresh application before the trial Court for grant of interim relief on the basis of documents which are annexed to the Review Petition. If such application is made, the trial Court will decide the same as expeditiously as possible. It will be open for the respondents to contest the said application on all grounds including the contentions raised in this petition.

(ii) To enable the petitioner to make appropriate application before the trial Court and to enable the petitioner to apply for appropriate ad-interim relief, it is directed that parties will maintain status- quo in respect of the hoardings in question for a period of six weeks from today.

(iii) The trial Court will decide such application, if made by the petitioner on its own merits.

(iv) All contentions pertaining to such application are kept open.

(v) There is no order as to costs.

(vi) Parties to act upon an authenticated copy of this order.

(**A.S.OKA, J.**)